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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

IN RE:)	Case No.: JCCP 4003
)	
COORDINATED LATEX GLOVE LITIGATION)	CASE MANAGEMENT ORDER
_____)	NO. 3
)	
GENERIC FILING)	
_____)	

PROTECTIVE ORDER GOVERNING CONFIDENTIALITY

Pursuant to California Code of Civil Procedure Sections 2025(i), 2030(e), 2031(e) and 2033(e), and San Diego County Superior Court Rule 6.9, the Court finds that a protective order governing confidentiality is appropriate in these coordinated proceedings to protect the disclosure of trade secrets and other privileged information. The Court finds that a protective order is in the public interest, that the parties have cognizable interests in materials that will be subject to discovery, and that unless a protective order is in effect, disclosure of such material would cause serious harm to the producing party.

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2 Therefore, it is ordered that:

3 1. All documents^{1/} containing a trade secret or other
4 confidential information may be designated "Confidential," so long
5 as such documents have not been disclosed by the producing party
6 to anyone other than those persons employed or retained by it.
7 Such documents or portions of documents will be designated, after
8 review by an attorney for the producing party, by stamping the
9 "Confidential - MDL No. 1148" or "Confidential-JCCP 4003" on each
10 page.

11 2. Any person may contest the designation of a document as
12 "Confidential" or request that a document not otherwise covered by
13 this order be considered confidential by applying to the Court or
14 Special Master for a ruling. In either event, counsel shall first
15 make a good faith effort to resolve the issue. The party
16 requesting confidentiality shall have the burden of showing that
17 such designation is appropriate.

18 3. Any party to this litigation or non-party that produces
19 or discloses documents or confidential information that it
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¹"Document" includes, without limitation, writings, drawings,
23 graphs, charts, photographs, physical objects, things, deposition,
24 hearing, and trial transcripts, discovery responses, phone
25 records, and other data compilations, together with all writings
26 whether typed, handwritten, printed or otherwise, as well as all
27 tape recordings, computer tapes, discs, software and other
28 electronic, magnetic, or mechanical recordings, however produced
or reproduced, and information stored in a computer whether or not
ever printed or displayed, and includes the original and all
copies. "Confidential information" means any information
contained in or necessarily derived from a "Document" stamped
"Confidential" or "Confidential-Counsel Only." In these
definitions, a reference in the singular or plural shall be
considered to be both.

1 believes should be limited to counsel only^{2/} may so designate as
2 "Confidential-Counsel Only." Such documents or portions of
3 documents will be designated, after review by an attorney for the
4 producing party, by stamping the "Confidential Counsel Only - MDL
5 No. 1148" or "Confidential Counsel Only - JCCP 4003" on each page.
6 The same procedures and burden of proof set forth in ¶ 2 shall
7 apply to such designations. Documents so designated may also be
8 disclosed to independent, third parties retained to furnish expert
9 services or advice, or to give expert testimony in a given action.

10 4. Upon pretrial deposition, or within 15 business days
11 after receipt of the transcript, a party may designate as
12 confidential any appropriate information, which designation shall
13 be served on all counsel. No confidentiality objection need be
14 made at a deposition and shall not be a ground for a direction or
15 refusal to answer. Depositions and transcripts will be considered
16 to be confidential for the 15-day period and thereafter if so
17 designated. Any individual not authorized by this Protective
18 Order to be a recipient of confidential information may be
19 excluded from a deposition while such information is being
20 elicited.

21 5. Any document or other information the confidentiality of
22 which is in dispute shall remain Confidential or, if requested,
23 Confidential-Counsel Only, until the dispute is resolved in
24 writing by counsel or, if necessary, until order of the Court.
25 Applications shall be by joint submission in which each side, or

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27 ²"Counsel Only" shall mean counsel of record in a given case
28 and other attorneys and staff in their law firms, together with no
more than three designated in-house corporate counsel of any party
and necessary staff.

1 all sides, set forth seriatim their positions on each separate
2 matter of issue in dispute.

3 6. Subject to ¶ 7, infra, no one may use confidential
4 documents or information that are subject to this Protective Order
5 other than in the context of the MDL litigation or this litigation
6 and other than individuals who are hereby authorized, absent a
7 court order to the contrary. Such individuals shall include
8 counsel, the parties' specifically authorized employees,^{3/} experts,
9 fact witnesses, together with such others as are approved by this
10 Court. Each individual who is permitted to see such confidential
11 documents shall first be shown a copy of this order and, if a
12 party's authorized employee, a party in the MDL litigation case or
13 their counsel, an expert, fact witness, or in-house counsel, shall
14 be required to be bound to observe the provisions of this order
15 with respect to all documents and information produced through
16 these proceedings by signing a Non-Disclosure Agreement, a copy of
17 which is attached as Exhibit "A." Parties and their counsel in
18 the MDL litigation who so agree and sign the Non-Disclosure
19 Agreement are authorized to have access to such documents and
20 information as may be subject to this Protective Order, unless
21 good cause is shown to withhold the authorization. Such access
22 shall be subject to any Court-approved charges. The resisting
23 party shall have the burden of showing why such disclosure should
24 not be made. Subject to the other provisions of this Protective
25 Order, parties and their counsel may have access to the
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27 ³Authorized employees shall be those identified by a party
28 and agreed to in writing by counsel for the producing party or
approved by the Court.

1 confidential documents and information of a producing party so
2 long as they are co-parties in at least one pending action.

3 7. Where a party intends to show a document or documents
4 designated by the producing party as "Confidential" or
5 "Confidential-Counsel Only" to another party's unauthorized
6 employee or to a fact witness, the party intending to show such
7 document, or documents shall provide 10 days written notice to the
8 producing party which designated the document or documents as
9 "Confidential" or "Confidential-Counsel Only." Such written
10 notice shall identify the person to whom disclosure is
11 contemplated and the specific documents or information proposed
12 for disclosure. If the producing party has objection to the
13 disclosure of such document or documents to the other party's
14 employee or to the fact witness, and so indicates in writing,
15 disclosure of the document or documents shall not be made absent
16 stipulation between the producing party and party seeking
17 disclosure, or Court order. If the producing party and party
18 seeking disclosure are unable to reach a stipulation, the
19 producing party may submit the dispute to the Special Master
20 within seven days of receiving written notice. The document or
21 document(s) at issue will not be shown to the unauthorized
22 employee or fact witness unless a stipulation is reached or order
23 is entered.^{4/}

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26 ⁴The procedure set forth in this paragraph will be subject to
27 periodic review by the Court for necessity and practicability.
28 The parties shall exert every reasonable effort to avoid the delay
and expense that may be occasioned by this procedure and to
resolve disputes without court intervention.

1 8. No recipient of documents or information under this
2 Protective Order may disclose such information to any unauthorized
3 individual. Any originator, author, or recipient of a document,
4 as identified on its face, may be shown the document.

5 9. Any document or information designated as "Confidential"
6 or "Confidential-Counsel only" shall be filed under seal with the
7 Court in the event that a filing is necessary. All such filings
8 shall be placed in sealed envelopes setting forth the caption of
9 the action, the title of the document or other reference and a
10 notation that:

11 This envelope is not to be opened or the
12 contents displayed or disclosed except by
13 Court order or written approval of the
14 parties.

15 If for any reason such information is no longer deemed
16 confidential by reason of Court order, the seal may be removed at
17 the Court's discretion.

18 10. If a confidential document or information is
19 inadvertently produced without being designated as "Confidential"
20 or "Confidential-Counsel only," the producing party may so advise
21 the recipient in which event the recipient shall exert every
22 reasonable effort to treat the document or information as though
23 timely designated and shall cooperate in its retrieval.

24 11. The prevailing party in any dispute submitted under this
25 order to the Court or Special Master may recover an award of
26 expenses, including attorney's fees, if approved by the Court.

27 12. Neither the taking of any action in accordance with the
28 provisions of this Protective order, nor the failure to object
thereto, shall be construed as a waiver of any claim or defense in

1 this action. Moreover, neither the failure to designate a
2 document or information as confidential in accordance with this
3 Protective Order nor the failure to object to a designation at a
4 given time shall preclude the filing of a motion at a later date
5 seeking to impose such designations or challenging the propriety
6 thereof. The entry of this Protective Order shall not be
7 construed as a waiver of any right to object to the furnishing of
8 information in response to discovery or to object to a requested
9 inspection of documents or things, and, except as expressly
10 provided, shall not relieve any party of the obligation of
11 producing information in the course of discovery.

12 13. Within 60 days after entry of dismissal or of final
13 judgment in this action, including appeals, all documents and
14 information, together with all copies thereof (including any
15 copies or originals in the possession of designated in-house
16 counsel and any independent expert), which have been and remain
17 designated as including confidential information of a producing
18 party pursuant to this Protective Order shall be collected and
19 returned to the producing party, provided that counsel for the
20 receiving party may retain one copy of any and all pleadings or
21 other papers filed in Court which contain designated confidential
22 information of the producing party for the purpose of dealing with
23 possible future disputes over alleged violations of this
24 Protective Order or over any agreement, decision, decree, order or
25 judgment disposing of all or part of this action. Without
26 affecting the obligation imposed by the preceding sentence, within
27 the same 60 days, if requested by a producing party, each
28 receiving party shall provide the producing party with a list of

1 the names and whereabouts of each independent expert who was
2 disclosed as a testifying expert in the above lawsuit and who
3 received that producing party's confidential information, and each
4 such receiving party shall cooperate with the producing party in
5 confirming that said documents have been returned to the receiving
6 party or destroyed. As for independent experts who were never
7 disclosed in the above lawsuit, and designated in-house counsel,
8 the counsel for each receiving party shall provide, on request, a
9 certification that all documents containing confidential
10 information in the possession of those individuals has been
11 returned or destroyed. In the alternative, the producing party
12 and receiving party may stipulate that all or some documents
13 containing confidential information may be destroyed, so long as
14 an appropriate certification satisfactory to the producing party
15 is provided.

16 14. The extent and manner in which any confidential
17 information may be used at trial shall be reserved and decided by
18 the trial court.

19 15. Nothing contained in this Protective Order, and no
20 action taken in compliance with it, shall (a) operate as an
21 admission by any party or person that any particular document or
22 information is or is not confidential; (b) operate as a waiver of
23 any claim or defense in this action; (c) prejudice in any way the
24 right of any party or person to seek a Court determination of
25 whether or not particular documents or information should be
26 disclosed or, if disclosed, whether or not they should be deemed
27 confidential information and subject to the terms of this Order.

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1 Any person may request the Court to grant relief from any
2 provisions of this Protective Order.

3 16. Nothing herein constitutes or may be interpreted as a
4 waiver by any party of the attorney-client privilege, attorney
5 work product protection or any other privilege.

6 17. Nothing herein shall preclude any party from seeking
7 other protective relief regarding confidentiality.

8 18. Nothing in this Protective Order shall prevent any
9 person from seeking relief from any provision of this Protective
10 Order, modification of this Protective Order, or from objecting to
11 discovery which it believes to be privileged or otherwise
12 improper.

13 19. The entry of this Protective Order shall not be
14 construed as a waiver of any right to object to the furnishing of
15 information in response to discovery or to object to a requested
16 inspection of documents or things, and, except as expressly
17 provided, shall not relieve any party of its obligation to produce
18 information in the course of discovery pursuant to controlling
19 law.

20 20. Nothing herein shall impose any restrictions on the use
21 or disclosure by a receiving party or witness of documents or
22 information obtained lawfully by such receiving party or witness
23 independently of the discovery proceedings in this action, whether
24 or not such documents or information are also obtained through
25 discovery proceedings in this action.

26 21. Nothing in this Protective Order shall prevent a party
27 or non-party from using or disclosing its own documents or

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1 information for any purpose, regardless of whether they are
2 designated confidential under this Protective Order.

3 22. Nothing herein shall be construed to affect in any
4 manner the admissibility as evidence of any document, information
5 or testimony.

6 23. This Court shall retain jurisdiction over the parties
7 and any other persons subject to the terms of this Protective
8 Order for the purpose of enforcing this Protective Order,
9 notwithstanding any subsequent disposition of this action.

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12 Dated: _____

William C. Pate
Superior Court Judge

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